No. 686

In the Supreme Court of the United States

OCTOBER TERM, 1963

In the Matter of the Petition of THE HOUSING AUTHORITY of the City of Seattle to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purpose of Providing Safe and Sanitary Accommodations for Persons of Low Income.

WALTER SCOTT BROWN and HELEN M. BROWN, husband and wife, *Petitioners*,

vs.

THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY, HONORABLE EDWARD E. HENRY, Judge, *Respondents*.

APPENDICES TO PETITION FOR A WRIT OF *CERTIORARI* TO THE SUPREME COURT OF THE STATE OF WASHINGTON

HULLIN, EHRLICHMAN, CARROLL & ROBERTS
Attorneys for Petitioners.

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THE ARGUS PRESS SEATTLE WASHINGTON

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APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

In the Matter of the Petition of The Housing Authority of the City of Seattle, to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purposes of The Housing Authority of the City of Seattle Under RCW 35.82, and in Particular the Purpose of Providing Safe and Sanitary Dwelling Accommodations for Persons of Low Income.	No. 594098

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter coming on regularly for hearing before the Honorable Edward E. Henry, Judge of the above entitled Court, on the 13th day of February, 1963, at the hour of 9:30 a.m., pursuant to notice heretofore issued in this cause; the petitioner appearing by its attorney, F. A. LeSourd, and the respondents appearing by their attorney, John D. Ehrlichman, and both parties having introduced evidence and exhibits and the court having heard and considered such evidence and exhibits and being fully advised, now makes and enters the following

FINDINGS OF FACT

I.

Petitioner is a public body corporate and politic, organized and existing under the Housing Authorities law (RCW Chapter 35.82) with boundaries coextensive

with the City of Seattle and extending five miles therefrom.

II.

On November 26, 1962, at a meeting duly and legally called, notice of which was properly given to the public under RCW 42.32.010; the Board of Commissioners of petitioner adopted Resolution No. 1198, finding and resolving (1) that project WASH 1-9 is necessary for the purposes of The Housing Authority of the City of Seattle and in particular the purpose of providing safe and sanitary dwelling accommodations for persons of low income, (2) that the acquisition of Lot 8 of Block 68, Terry's First Addition to Seattle, according to plat recorded in Volume 1 of Plats, page 49, of the records of King County, Washington, known as Parcel 4 of Housing Project WASH 1-9, is necessary for such purposes, (3) that The Housing Authority of the City of Seattle shall take all necessary and proper steps to acquire said real property by the exercise of the power of eminent domain, and (4) that the Executive Director and attorneys of The Housing Authority of the City of Seattle are authorized and directed to proceed with such acquisition.

III.

The respondents, Walter Scott Brown and Helen M. Brown, his wife, are all of the parties interested in Lot 8 of Block 68, Terry's First Addition to Seattle, King County, Washington, and they have been duly served with notice in condemnation in this cause; and all processes in the above entitled court and cause have

been duly, regularly and properly made on said respondents and each of them.

IV.

The object and use for which the said land is sought to be condemned is Housing Project WASH 1-9, which is a project of approximately 300 units for the housing of elderly persons who are persons of low income as defined in RCW 35.82.020.

V.

The establishment of a housing project for elderly persons who are persons of low income as defined in RCW 35.82.020 is a public purpose.

VI.

There were in 1960, as of the last census, 8403 elderly households in Seattle with income, as defined by the United States Bureau of the Census, under $1,000.00 per year, and an additional 7312 elderly households with income, as so defined, between $1,000.00 and $1,499.00 per year.

VII.

Elderly persons of low income applying for public housing in the existing projects of The Housing Authority of the City of Seattle have increased over the last several years, and it is reasonable to assume that the Authority will be unable to accommodate in its existing facilities all who are eligible and apply.

VIII.

There were in 1960, as of the last census, 5,979 elderly households in Seattle occupying housing that was sub-

standard as defined by the United States Bureau of the Census.

IX.

There are a substantial number of elderly persons and households in Seattle who lack the amount of income necessary to enable them, without financial assistance, to live in decent, safe and sanitary dwellings.

X.

The Board of Commissioners of The Housing Authority of the City of Seattle, after due and proper consideration of relevant matters, has reasonably determined that Housing Project WASH 1-9 is necessary to assist in meeting the need of elderly persons of low income for decent, safe and sanitary dwellings.

XI.

The public interest requires the construction of Housing Project WASH 1-9.

XII.

There is a substantial concentration of both elderly persons and substandard housing in the central area of Seattle.

XIII.

The Board of Commissioners of The Housing Authority of the City of Seattle, after due and proper consideration of relevant matters, has reasonably determined that the most suitable site for Housing Project WASH 1-9 is the area between James Street on the north, Jefferson Street on the south, the new freeway on the west, and the alley between 8th and 9th

Avenues on the east, in the central area of Seattle. This site includes Lot 8 of Block 68, Terry's First Addition to Seattle.

XIV.

Lot 8 of Block 68, Terry's First Addition to Seattle, here sought to be condemned, is required and necessary for the purpose of Housing Project WASH 1-9 of The Housing Authority of the City of Seattle.

DONE IN OPEN COURT this 26th day of February, 1963.

EDWARD E. HENRY
Judge.

From the foregoing Findings of Fact, the court makes the following

CONCLUSIONS OF LAW

I.

Petitioner has the legal authority to condemn the land here involved and has taken all steps necessary to the exercise of that authority.

II.

The taking of the land here involved for the purpose of a housing project for elderly persons who are persons of low income as defined in RCW 35.82.020 is a public use and the lands here involved are necessary to that use.

III.

Petitioner is entitled to a certificate of public use and necessity herein.

DONE IN OPEN COURT this 26th day of February, 1963.

EDWARD E. HENRY
Judge.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

In the Matter of the Petition of The Housing Authority of the City of Seattle, to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purposes of The Housing Authority of the City of Seattle Under RCW 35.82, and in Particular the Purpose of Providing Safe and Sanitary Dwelling Accommodations for Persons of Low Income.	No. 594098

ORDER OF ADJUDICATION OF PUBLIC USE

This matter having come on regularly for hearing before the Honorable Edward E. Henry, Judge of the above entitled Court, on the 13th day of February, 1963, at the hour of 9:30 a.m., pursuant to notice heretofore issued in this cause, the petitioner appearing by its attorney, F. A. LeSourd, and the respondents appearing by their attorney, John D. Ehrlichman, and both parties having introduced evidence and exhibits and the court having heard and considered such evidence and exhibits and being fully advised, and having made and entered its findings of fact and conclusions of law in writing herein, now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED that a declaration and certificate of public use and necessity is hereby granted to petitioner as to Lot 8 of Block 68, Terry's First Addition to Seattle, King County, Washington,

and that a jury be empanelled to ascertain and determine the compensation to be made in money, irrespective of any improvement proposed by the petitioner, to the respondents for the taking of said property, or by the court in case a jury is waived.

DONE IN OPEN COURT this 26th day of February, 1963.

/s/ EDWARD E. HENRY
Judge.

APPENDIX C

WASHINGTON STATE SUPREME COURT

[No. 36991. Department One. July 3, 1963.]

In the Matter of the Petition of THE HOUSING AUTHORITY OF THE CITY OF SEATTLE.
WALTER SCOTT BROWN, *et al., Relators*, v. THE SUPERIOR COURT FOR KING COUNTY, *Edward E. Henry, Judge, Respondent.**

Certiorari to review an order of the Superior Court for King County, No. 594098, Edward E. Henry, J., entered February 26, 1963. *Affirmed.*

Condemnation proceedings. Relators seek review of an order of public use and necessity.

Hullin, Ehrlichman, Carroll & Roberts, for relators.

LeSourd & Patten and *F. A. LeSourd*, for respondent.

PER CURIAM. — In this action to condemn certain property of the relators, The Housing Authority of the City of Seattle showed that it needed Lot 8, Block 68, adjacent to Yesler Terrace, an existing public housing project, for the erection of a proposed high-rise apartment building for the housing of elderly persons of low income, according to the trial court's findings. An order of public use and necessity was accordingly entered, and the relators applied for a writ of *certiorari*, contending that the findings were not supported by the evidence.

In enacting RCW 35.82.010, the legislature recognized the existence of unsafe and unsanitary dwelling facilities in this state, which are occupied by persons

of low income who cannot afford decent housing. It declared *inter alia:*

"(3) . . . and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; . . . "

The relators do not question the correctness of this declaration; but they contend that the building of a new apartment house for the accommodation of elderly persons of low income is not necessary, and that it is not necessary to acquire their lot for the proposed building. We do not find it necessary to discuss the evidence at length. Suffice it to say that there was substantial evidence to support the trial court's findings that The Housing Authority reasonably determined that the project is necessary and that the land is necessary for the project.

[1] The rule is that a determination by the proper municipal authorities that a necessity exists is conclusive, in the absence of actual fraud, or such arbitrary or capricious conduct as would amount to constructive fraud. *King Cy. v. Theilman*, 59 Wn.(2d) 586, 369 P.(2) 503; *State ex rel. Northwestern Elec. Co. v. Superior Court*, 28 Wn.(2d) 476, 183 P.(2d) 802, 173 A.L.R. 1351; *State ex rel. Church v. Superior Court*, 40 Wn.(2d) 90, 240 P.(2d) 1208. There is no contention that any of these factors was present in this case and no evidence to support such a contention if it were made.

[2] The relators also say that the condemnation is a

part of a "project authorized at a clandestine meeting, contrary to RCW 42.32.010." That section provides that public notice shall be given of board meetings at which resolutions are to be adopted. The record shows that such notice was given in this instance. The fact that the project was previously discussed at a private meeting does not invalidate this later action, and the relators cite no authority so holding.

[3] Error is assigned to the admission of testimony by an employee of The Housing Authority that applicants for housing had complained that they could not find adequate accommodations at prices which they could afford. We assume, without deciding, that this testimony was not competent, as the relators contend, because it was hearsay. Even so, the admission of the evidence was not error warranting a reversal, for the relators fail to show wherein they were prejudiced by its admission. There was a plethora of evidence tending to show that there was a scarcity of safe and sanitary housing for the elderly with low incomes, which was more than sufficient to support The Housing Authority's determination.

The writ is quashed.